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7 **UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF NEW JERSEY**
9 **NEWARK VICINAGE**

10 SHANGHAI EIDIE INTERNATIONAL
11 TRADING CO. LTD,
12 Plaintiff,

13 vs.

14 TRANSMODAL CORPORATION, SHANGHAI
15 HANBO INTERNATIONAL LOGISTIC
16 CO. LTD D/B/A E.L.G. SHANGHAI
17 LTD, ANDEVER-LEADING
18 INTERNATIONAL INC.,
19 Defendants.

Case No.:

**VERIFIED COMPLAINT BASED ON
MARITIME CONTRACTS AND DEMAND
FOR JURY TRIAL FOR CLAIMS IF
ANY UNDER RULE 38(a)**

20 Plaintiff, SHANGHAI EIDIE INTERNATIONAL TRADING CO. LTD
21 ("EIDIE" or "plaintiff"), by and through its attorneys, Law Offices
22 of Hanbin Wang, complaining of the Defendants, TRANSMODAL
23 CORPORATION("TMC"), SHANGHAI HANBO INTERNATIONAL LOGISTIC CO.LTD
24 D/B/A E.L.G. SHANGHAI LTD, AND EVER-LEADING INTERNATIONAL INC.,
25 (collectively "ELG" for the last two defendants) by way of Verified
26 Complaint alleges as follows:

27 **I. PARTIES**

28 1. At all material times, plaintiff, SHANGHAI EIDIE
INTERNATIONAL TRADING CO. LTD was and still is a corporation

1 organized under the laws of China and having its principal
2 place of business located at Room 1304, #1725 Huang Xing Road,
3 Shanghai, China.

4 2. At all material times, plaintiff was engaged in the business
5 of manufacturing and exporting merchandise out of China to
6 countries such as United States and was the shipper, the owner
7 and the real party in interest of the six-hundred and sixty-two
8 (662) cartons of leather clothing ("cargo") with an invoice
9 price of \$269,505.42 under the seven (7) House Bills of Lading
10 ("Bill") issued by the Defendant, TMC on October 2, 12 and 21,
11 2011 respectively for transportation by sea from Shanghai to
12 Los Angeles/Long Beach, California.

13 3. At all material times and at the time of filing this action,
14 plaintiff did not and do not transact business in this judicial
15 district. Plaintiff was requested to hire TMC by one of TMC's
16 import customers, Swaxx Corporation which was organized under
17 the laws of the State of New York ("Swaxx"), for the
18 transportation of the cargo purchased by Swaxx on a letter of
19 credit.

20 4. At material times, defendant, TRANSMODAL CORPORATION, was
21 and is still a corporation organized under the laws of the State
22 of Massachusetts with its principal place of business located
23 at 48 South Franklin Turnpike, Suite 202-204, Ramsey, New
24 Jersey 07446.

1 5. At all material times, TMC was a U.S.-registered Non Vessel
2 Operator Common Carrier ("NVOCC"), or what is commonly known as
3 a "freight forwarder." TMC was also a Customs House Brokerage
4 firm ("CHB").

5
6 6. As an NVOCC, TMC does not own the vessels (whether ocean
7 going or air) by which TMC by itself or through agents around
8 the world, arranges the passage of its customer's freight,
9 which is typically encased in transport containers of the type
10 found on ocean going container ships, or being pulled by
11 tractor trailers on U.S. and foreign highways.

12
13 7. As an NVOCC, TMC by itself or through its agents around the
14 world, receives a master bill of lading issued by the vessel
15 owner, designating TMC as the consignee to receive the
16 freight at the U.S. delivery ports. TMC issues its own House
17 Bill of Lading in connection with the corresponding master bill
18 of lading, designating the consignee according to the shipper's
19 instruction.

20
21 8. TMC's CHB business involves the clearance of freight through
22 United States Customs. TMC accomplishes this CHB function by
23 paying customs duties for and on behalf of customers, and by
24 receiving the freight from the vessel owner according to the
25 master bill of lading, and by moving their freight from bonded
26 to general warehouses. Ultimately TMC moves freight into the
27 hands of consignees designated on TMC's Bills.
28

1 9. Some of TMC's ancillary services include warehousing, inland
2 transportation of freight by truck and related services
3 including packaging, labeling, back office facilities, real
4 time computer logistics, and essentially full service movement
5 of freight from point "A" to point "B" by whatever legal means
6 the customer requires.

8 10. The majority of TMC's operations involve the importation of
9 goods from overseas on behalf of importer customers by way of
10 ocean going container vessels.

11 11. TMC also employs independent affiliates acting as TMC's
12 agents located in various countries, including China and India.

14 12. At all material times, defendant, SHANGHAI HANBO
15 INTERNATIONAL LOGISTIC CO. LTD D/B/A E.L.G. SHANGHAI LTD was a
16 corporation organized under the laws of China and with its
17 principal place of business located at Room 1407, Global New
18 Times Plaza, #1666 North Si Chuan Road, Shanghai, China, was a
19 China-registered Non Vessel Operator Common Carrier ("NVOCC"),
20 or what is commonly known as a "freight forwarder," and was an
21 agent for Defendant TMC for all TMC's U.S. in-bound shipments
22 from China, especially for those shipments of the TMC's
23 importer customer Swaxx.

25 13. At all material times, defendant, EVER-LEADING INTERNATIONAL
26 INC. was a corporation organized under the laws of the State of
27 California and with its places of business both at Room 1407,
28

1 Global New Times Plaza, #1666 North Si Chuan Road, Shanghai,
2 China and at 1320 North San Gabriel Blvd., Rosemead,
3 California, was a U.S.-registered Non Vessel Operator Common
4 Carrier ("NVOCC"), or what is commonly known as a "freight
5 forwarder," and was a subsidiary of defendant, SHANGHAI HANBO
6 INTERNATIONAL LOGISTIC CO. LTD D/B/A E.L.G. SHANGHAI LTD.
7
8

9 II. JURISDICTION AND VENUE

10 14. This Court has original jurisdiction over the subject matter
11 of this action pursuant to Article III, Section 2, U.S.
12 Constitution, and 28 U.S.C. §1331 (federal question), §1333
13 (maritime) and F. R. Civ. P. 9(h)(maritime) as this matter
14 relates to maritime contracts for the carriage of goods by sea
15 to ports of the United States in foreign trade and thus comes
16 under the laws of the Carriage of Goods by Sea Act ("COGSA"),
17 46 U.S.C. §30701, and the federal maritime common law as it
18 applies to international carriers and transportation.
19
20

21 15. Also the Clause Paramount of TMC's Bill specifically
22 subjects all the shipments under the 7 Bills to be governed by
23 COGSA to the extent that TMC's Bill's terms are trumped by
24 COGSA if they are inconsistent with COGSA.
25

26 16. TMC's Bill further specifically extends the application of
27 COGSA beyond tackle to tackle to cover period after cargo being
28 discharged from ocean vessels until proper delivery is made.

1 17. The terms of the Bill, especially those concerning TMC's
2 absolution and limitation of its liabilities are not enforceable
3 because they are violating COGSA.

4 18. Plaintiff did not have adequate notice or fair opportunity
5 to opt out of the adverse effects of those terms.
6

7 19. The terms should be strictly interpreted against TMC.

8 20. Subject matter jurisdiction over remaining non-federal claims
9 if any are based on the Court's supplemental jurisdiction
10 pursuant to 28 U.S.C. §1367.

11 21. This Court has personal jurisdiction over each of the
12 Defendants. Since all material times, defendant TMC has
13 conducted business in and has had continuous and systematic
14 contacts with this federal judicial district. Defendant ELG has
15 had minimum contacts with this federal judicial district by
16 acting as agent of TMC such that the maintenance of this action
17 does not offend traditional notions of fair play and
18 substantial justice. The claims against ELG are directly
19 related to and/or arise out of ELG's contacts with this federal
20 judicial district.
21

22 22. On information and belief, ELG also has consented to the
23 personal jurisdiction of this judicial district by way of
24 agency agreement with TMC.
25

26 23. Venue is proper in this District pursuant to 28 U.S.C. §§
27 1391(b)(1) because defendant TMC is a resident of this federal
28

1 judicial district.

2
3 **III. FACTUAL ALLEGATIONS**

4 24. Between September and October 2011, EIDIE consigned the
5 cargoin good order and condition to TMC's agent in Shanghai
6 ELG, which accepted under the authority and approval by Keith
7 Block, Paul Wong, Grace Quintana, Christopher Peterson and Max
8 Kantzer, all TMC's officers and employees, for transportation
9 by sea from Shanghai to Los Angeles/Long Beach, California.
10

11 25. In return, TMC through its agent in Shanghai - ELG, issued
12 to EIDIE the above mentioned 7 original Bills with the same
13 authority and approval. A copy of the front of the Bills plus
14 corresponding invoices and packing lists are attached as
15 Exhibit A.
16

17 26. TMC was specifically notified by EIDIE and specifically
18 noted by agreement on the 7 Bills that the consigned cargo was
19 the subject of a sale to Swaxx under the payment term of at
20 sight letter of credit against original Bills among other
21 documents.
22

23 27. The buyer of the cargo Swaxx must pay the full invoice
24 price in exchange for the original Bills to pick up the cargo
25 from TMC in Los Angeles/Long Beach. No original Bills, no
26 delivery or no authority to delivery by TMC.
27
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1 28. As a result of above specific instruction by EIDIE and of
2 TMC's specific agreement to such instruction, under the TMC's 7
3 original Bills, the consignee was all "to the order of RBS
4 Citizen, N.A.," the Swaxx's bank. "To notify party" was all
5 "Swaxx Corporation."
6

7 29. Between October and November 2011, RBS Citizen, N.A.
8 refused payment under the letter of credit and returned all 7
9 original Bills back to EIDIE, who is still in possession of the
10 7 original Bills.
11

12 30. The cargo was delivered in good order and condition to the
13 exclusive custody, care and possession of TMC through its agent
14 in Shanghai - ELG, and loaded on board ocean vessels booked by
15 TMC through its agent ELG, on October 2, 12 and 21 2011
16 respectively. Such delivery to ELG was acknowledged and
17 recognized as if to TMC through various e-mails by Keith Block,
18 Paul Wong, Grace Quintana, Christopher Peterson and Max
19 Kantzer, all TMC's officers and employees.
20

21 31. Upon cargo's arrival in Los Angeles/Long Beach some ten
22 plus days after the departure in Shanghai, TMC had not
23 contacted EIDIE or RBS Citizen, N.A. for authorization to
24 release without presentation of original Bills and simply
25 misdelivered the cargo to Swaxx without presentation of
26 original Bills by either actual misdelivery or by issuing
27
28

document allowing such misdelivery without any legal authority under the terms of the Bills.

32. Neither EIDIEnor RBS Citizen, N.A. has ever authorized such misdelivery without presentation of original Bills.

33. Bills' numbers are HB11100219 (60 cartons, on board 10/2/11), HB11100205(78 cartons, on board 10/2/11), HB11100227(17 cartons, on board 10/2/11), HB11100228(122 cartons, on board 10/2/11), HB11100230(37 cartons, 10/12/11), HB11100243(290 cartons, on board 10/21/11), HB11100244(58 cartons, on board 10/21/11).

34. Swaxx admitted by e-mail dated 6/13/12 receiving the delivery of the cargo in good condition under the seven (7) Billsbyrecognizing the validity of the three corresponding invoices E11JM714, E11JM717 and E11JM718, which remain unpaid till this day.

35. Based on information and belief, TMC acting as a customhouse broker also cleared the cargo on behalf of Swaxx through the United States Customs without knowledge and permission of EIDIE or RBS, Citizen N.A. and through false representation to the U.S. Customs as to identity of the true owner of the cargo.

36. Based on information and belief, Swaxx has since resold the cargo to third parties and been insolvent.

37. The relationship between the three invoices and the

seven(7) Bills are as follows:

a. Invoice E11JM714 (Price :\$154,877.40)

i. B/L: HB11100219 (60ctns)

ii. """"""""""205 (78ctns)

iii. """"""""""227 (17ctns)

iv. """"""""""228 (122ctns)

(Total 277 CTNS, On Board 10/2/11)

b. Invoice E11JM717 (Price: \$37,593.12)

i. B/L: HB11100230 (37 CTN, On Board 10/12/11)

c. Invoice E11JM718 (Price: \$77,034.90)

i. B/L: HB11100243 (290ctns)

ii. """"""""""244 (58ctns)

(Total 348 CTNS, On Board 10/21/11)

Grand Total: \$269,505.42, 662 CTNS.

38. As a result of the foregoing, EIDIE has sustained damages in the amount of \$269,505.42, which was proximately caused by the gross negligence, carelessness, recklessness, negligent acts and/or omissions and/or otherwise culpable conduct of the defendants, their agents and their employees.

39. Plaintiff has demanded upon TMC directly and through its agent ELG, the return of the cargo or in the alternative for reimbursement of its losses, but defendants have to date failed and refused to pay some or all of said claim.

IV. CAUSES OF ACTION

COUNT I

LIABILITY OF DEFENDANTS UNDER THE CARRIAGE OF GOODS BY SEA ACT

40. Plaintiff incorporates the preceding paragraphs by

1 reference, as if said allegations were set forth at length
2 herein.

3 41. By virtue of the foregoing, defendants TMC and ELG, jointly
4 or severally have failed to make proper delivery of the cargo
5 as a common carrier by sea in Los Angeles/Long Beach and are
6 liable under the Carriage of Goods by Sea Act, 46 U.S.C. §1300
7 et seq.

8
9 WHEREFORE, plaintiff, SHANGHAI EIDIE INTERNATIONAL TRADING
10 CO., demands that judgment be entered in its favor and against
11 defendants TRANSMODAL CORPORATION, SHANGHAI HANBO INTERNATIONAL
12 LOGISTIC CO., LTD D/B/A E.L.G. SHANGHAI LTD AND, EVER-LEADING
13 INTERNATIONAL INC., jointly and/or severally, in the amount of
14 \$269,505.42, plus pre-judgment interest from the date of
15 supposed delivery in Los Angeles/Long Beach and the cost of
16 this action.
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20 **COUNT II**

21 **LIABILITY OF DEFENDANTS FOR BREACH OF MARITIME CONTRACT**

22 42. Plaintiff incorporates the preceding paragraphs by
23 reference, as if said allegations were set forth at length
24 herein.

25 43. By virtue of the foregoing, defendants breached its
26 contractual agreements with plaintiff, and is therefore liable.

27 44. Adequate and prompt notice of the aforesaid breach has been
28

1 supplied to defendant TMC or its agent, ELG and plaintiff has
2 at all times materially complied with all obligations under its
3 contract.

4 WHEREFORE, plaintiff, SHANGHAI EIDIE INTERNATIONAL TRADING
5 CO., demands that judgment be entered in its favor and against
6 defendants TRANSMODAL CORPORATION, SHANGHAI HANBO INTERNATIONAL
7 LOGISTIC CO., LTD D/B/A E.L.G. SHANGHAI LTD AND, EVER-LEADING
8 INTERNATIONAL INC., jointly and/or severally, in the amount of
9 \$269,505.42, plus pre-judgment interest from the date of
10 supposed delivery in Los Angeles/Long Beach and the cost of
11 this action.
12
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14

15 **COUNT III**

16 **LIABILITY OF DEFENDANTS FOR BREACH OF FEDERAL MARITIME**

17 **COMMON LAW OF BAILMENT**

18 45. Plaintiff incorporates the preceding paragraphs by
19 reference, as if said allegations were set forth at length
20 herein.
21

22 46. Plaintiff tendered the aforesaid cargo to defendants in good
23 and sound condition, for adequate consideration, as a bailment.

24 47. With no fault on the part of plaintiff contributing thereto,
25 defendants failed and refused to return said cargo to plaintiff
26 upon demand therefor.
27

28 48. By virtue of the foregoing, defendants are liable under

1 principles of common law bailment for the misdelivery of the
2 leather clothing as described above.

3 WHEREFORE, plaintiff, SHANGHAI EIDIE INTERNATIONAL TRADING
4 CO., demands that judgment be entered in its favor and against
5 defendants TRANSMODAL CORPORATION, SHANGHAI HANBO INTERNATIONAL
6 LOGISTIC CO., LTD D/B/A E.L.G. SHANGHAI LTD AND, EVER-LEADING
7 INTERNATIONAL INC., jointly and/or severally, in the amount of
8 \$269,505.42, plus pre-judgment interest from the date of
9 supposed delivery in Los Angeles/Long Beach and the cost of
10 this action.
11

12 **V. DEMAND FOR JURY TRIAL**

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14 49. Plaintiff hereby demands trial by jury for any and all claims
15 if any under F. R. Civ. P. 38(a).
16

17 Dated: October 4, 2012
18 Newark, New Jersey
19

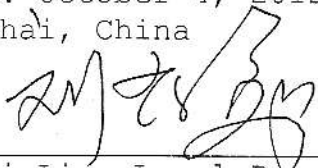
20 RESPECTFULLY SUBMITTED,

21 s/Hanbin Wang
22 Hanbin Wang, Esq.
23 Law Offices of Hanbin
24 Wang
25 Attorneys for Plaintiff
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27
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PLAINTIFF'S VERIFICATION

Cunmei Liu, under the penalties of perjury hereby affirms that I am the Legal Person Representative, a/k/a corporate representative of plaintiff Shanghai Eidie International Trading, Co. Ltd under the laws of China. I have full authority to sign and bind legally Shanghai Eidie International Trading, Co. Ltd. I am familiar with the facts and circumstances of this matter. I have read the foregoing Complaint in its Chinese translation and know the contents thereof, and that the same is true to my own knowledge except as to matters therein stated to be alleged on information and belief, and that as to those matters, I believe them to be true. The source of my information is based on my personal involvement in the matter, my conversation with my colleagues and the records maintained in our office.

Dated: October 4, 2012
Shanghai, China



Cunmei Liu, Legal Person Representative,
AKA, corporate representative, on behalf of
Shanghai Eidie International Trading, Co., Ltd.